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Elections to fill vacancies in subsidiary organs and other elections: election of fourteen members of the Human Rights Council

Note verbale dated 26 April 2007 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly

The Permanent Mission of the Republic of South Africa presents its compliments to the Permanent Missions of the States Members of the United Nations and with reference to the forthcoming elections of the members of the United Nations Human Rights Council scheduled for 17 May 2007 in New York, has the honour to inform the latter that the Government of the Republic of South Africa has decided to present its candidature for re-election to the Human Rights Council for the period 2007-2010.

South Africa is currently serving as a member of the Human Rights Council and has played a leading role in all the ongoing institution-building processes of the Council, which mark a critical transition from the Commission on Human Rights to the new Council.

The Permanent Mission of the Republic of South Africa to the United Nations herewith encloses an aide-memoire outlining South Africa's voluntary commitments with respect to the promotion and protection of human rights in accordance with General Assembly resolution 60/251 of 15 March 2006 (see annex).

The Government of the Republic of South Africa would appreciate the valuable support of the States Members of the United Nations for its candidature to the Human Rights Council.

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Annex to the note verbale dated 26 April 2007 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly

Aide-memoire in support of South Africa's candidature to the Human Rights Council

Following the first democratic elections in 1994, South Africa returned to the international community in 1995 to assume its rightful place among the community of nations. The experience in this relatively short period has been richly rewarding and South Africa has played a key role in the shaping of the international human rights agenda including the constant development of international human rights and humanitarian law. A central consideration in South Africa's foreign policy is the commitment to the promotion, protection and fulfilment of human rights and fundamental freedoms and the advancement of democracy.

South Africa's Constitution and Bill of Rights

The first democratic elections of 1994 placed South Africa firmly on the path of constitutional democracy. The Republic of South Africa Constitution Act 108 of 1996 is the supreme law of the land. In keeping with the international Bill of Human Rights, the South African Constitution entrenches and constitutionally guarantees all the universally recognized human rights and fundamental freedoms.

Whereas the South African democracy is relatively young, the heroic struggle by South Africans for democracy, social justice and human rights and fundamental freedoms is very old and extends over a period of 350 years. During this period South Africans were subjected to successive repressive regimes ranging from conquests, colonialism and the worst form of institutionalized racism and racial discrimination, namely, apartheid.

The 1994 democratic elections in South Africa created a political space for all the rights enumerated in the Constitution to be practically enjoyed. In this regard, the political vision of the democratic government in South Africa is predicted on a fundamental principle which affirms the inextricability between economic, social and cultural rights on the one hand, and the civil and political rights on the other. Also consistent with the fundamentals of the international human rights law, South Africa strongly upholds the notion of i) promotion, ii) protection and iii) fulfilment of all human rights and fundamental freedoms. South Africa's human rights value system is founded on this notion. South Africa has lodged its National Action Plan for the Promotion and Protection of Human Rights at the United Nations on 10 December 1998.

The South African Constitutional Court decisions have produced significant judgements and adjudications which underline the justiciability of the economic, social and cultural rights. The South African case law is currently being used at the international level to give impetus and momentum to the strengthening of the international human rights instruments dealing with economic, social and cultural rights.

Between 1995 and 2006 South Africa has been a member of the Commission on Human Rights on three occasions. In this regard, South Africa chaired the 54th Session of the Commission on Human Rights in 1998, became a Vice-Chair to the 58th Session in 2002 and acted as Co-ordinator on Human Rights issues on behalf of the African Group during the 59th Session in 2003.

Institutions supporting South Africa's democracy

National institutions, established in terms of the constitutional provisions to support constitutional democracy in the country, are actively involved in the monitoring of South Africa's compliance with respect to the implementation of international human rights instruments of which South Africa is a party.

The South African Constitution of 1996 makes provision, through its Chapter 9, for the establishment of the following state institutions to strengthen constitutional democracy in the Republic of South Africa. These institutions are independent and subject only to the Constitution and Parliament:

the Public Protector,
the South African Human Rights Commission,
the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities,
the Commission for Gender Equality,
the Auditor-General, and
the Electoral Commission.

UNDERTAKINGS/PLEDGES

It should be underlined that South Africa by its very nature and for historical reasons is among the countries within the United Nations that takes the international human rights agenda very seriously. As a member of the new Human Rights Council, the South African Government undertakes to abide by the following principles:

continue to receive the HRC's Special Procedures and Mechanisms (consistent with its decision of 22 October 2002) wishing to visit the country in keeping with their various mandates. Since the issuance of this open invitation, the following mechanisms have visited South Africa without any restrictions or impediments;

Special Rapporteur on the Situation of Human Rights and Fundamental of Indigenous Peoples,
Working Group on Arbitrary Detentions, and
Special Rapporteur on the Sale of Children, Child Pornography and Child Prostitution, and
Special Rapporteur of the African Commission on Human and People's Rights (ACHPR) on the Conditions of Prisons and Detention in Africa,

respect for the integrity and dignity of the Office of the High Commissioner for Human Rights. The South African Government will work to ensure that the High Commissioner for Human Rights (HCHR) and her personnel are above the manipulation and influences of States,

continue contributing financially to the OHCHR. Such contributions shall not be in any way earmarked, as the earmarking of funding to the OHCHR has a limiting effect on the operations of the OHCHR,

continue to support important funds and programmes within the OHCHR aimed at advancing the cause of human rights globally, such as the Voluntary Fund for Victims of Torture, the Voluntary Fund for Victims of Contemporary Forms of Slavery and the recently established United Nations Democracy Fund (UNDEF),

continue with its unwavering position to advocate for a balanced Sustainable Development Programme within the human rights framework as underlined in the Vienna Declaration and Programme of Action (VDPA) as well

as the United Nations General Assembly resolution 48/141. In this regard South Africa will be one of the chief proponents of a balanced agenda of the HRC which reflects, among others, the primacy of achieving the realisation of the right to development as well as moral human rights issues such as the eradication of poverty and underdevelopment. As it will be recalled, South Africa hosted the World Summit on Sustainable Development in Johannesburg in November 2002 whose Programme of Action is globally regarded as an instructive document for achieving sustainable development,

work to ensure that one of the first preoccupations of the substantive sessions of the HRC will be to update the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), through an amendment protocol, placing the right to development on par with all other rights enumerated in these instruments,

work to promote, within the Human Rights Council, a common understanding that human rights can only be practically enjoyed through an effective partnership with all the relevant stakeholders at all levels,

continue to submit country reports to human rights Treaty Monitoring Bodies. To this end, South Africa will present its country reports to the CERD and the CAT during 2006. South Africa has also presented, during 2005, its country report to the African Commission on Human and Peoples' Rights, and

undertake to submit in the near future a National Action Plan (NAP) exclusively covering the area of racism and racial discrimination as required by the Durban Declaration and Programme of Action (DDPA). As it will be recalled, South Africa hosted the World Conference Against Racism, Racial Discrimination, Xenophobia and Related (WCAR) on 31 August to 08 September 2001.

INTERNATIONAL INSTRUMENTS TO WHICH SOUTH AFRICA IS A STATE PARTY

The South African Government signed most of the international human rights instruments on 10 December 1995, and have since ratified/acceded to the following instruments:

the International Covenant on Civil and Political Rights (ICCPR)
the Rome Statute of the International Criminal Court (ICC)
the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
the Convention on the Rights of the Child (CRC)
Optional Protocol to the ICCPR
Second Optional Protocol to the ICCPR
Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution
Optional Protocol to the CRC on the Use of Children in Armed Conflict, and
Optional Protocol to the CEDAW.

REGIONAL INSTRUMENTS TO WHICH SOUTH AFRICA IS A STATE PARTY

South Africa is also a State Party to the following regional (African) human rights instruments:

the African Charter on Human and Peoples' Rights

the African Charter on the Rights and Welfare of the Child, and
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

South Africa has volunteered and is next in line to be peer reviewed under the African Peer Review Mechanism on the New Partnership for Africa's Development (NEPAD).

Commitment to international human rights instruments

South Africans are serving or have served on the following Treaty Monitoring Bodies:

the Committee on the Elimination of Racial Discrimination (CERD),
the Committee on the Rights of the Child (CRC), and
the Committee on the Elimination of Discrimination Against Women (CEDAW), and
the African Commission on Human and Peoples' Rights (ACHPR).

South Africa plays a key role in advocating the agenda for development through intergovernmental structures of the Non- Aligned Movement (NAM) and the Group of 77 and China (G77).

INSTRUMENTS IN THE PROCESS OF RATIFICATION

The South African Government is in the process of ratifying the following important human rights instruments:

the International Covenant on Economic, Social an Cultural Rights (ICESCR)
the International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families, and
the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (OPCAT)